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Letter dated 2 January 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Niue, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-22316 (E) 280302

Annex

Note verbale dated 24 December 2001 from the Office for External Affairs of Niue addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Office for External Affairs of the Government of Niue presents its compliments to the Secretary of the Counter-Terrorism Committee of the United Nations.

The Secretary has requested countries to report by 27 December 2001 with regard to Security Council resolution 1373 (2001), which was adopted by the Security Council on 28 September 2001.

The Government of Niue hereby presents its report accordingly (see enclosure).

Enclosure

Report to the Counter-Terrorism Committee of the United Nations Security Council on resolution 1373 (2001)

Niue

Introduction

Niue is one of the world's smallest states. Lying in the middle of the South Pacific between Samoa, the Cook Islands and Tonga, its 259 km of land sits on top of a giant undersea volcano.

The island was first sighted by Captain Cook in 1774 and finally granted protection by the British Crown in 1900. Niue was annexed to New Zealand the following year and administered by it as an overseas territory.

In 1974, Niue chose self-government in free association with New Zealand, rather than full independence from or political integration with its administrator. The Constitution of Niue came into force on 19 October 1974. Niue has full control over domestic and external affairs, and legislative power rests in the democratically elected Assembly.

Due to its relationship with New Zealand, Niue is an associate member of the British Commonwealth and, as such enjoys the protection of the British Crown. Queen Elizabeth II is Head of State.

The resident population of Niue is a little under 2000, most of whom live in the administrative centre, Alofi. Niueans are also New Zealand citizens and up to 20,000 live in New Zealand and Australia.

The relationship with New Zealand ensures a stable political situation in Niue. Both New Zealand and Australia provide aid for the Niuean economy. The majority of the working population is employed by the public service and the private sector has little development. Industries include the export of taros (a root crop) and tourism.

New Zealand currency is used in Niue. The Westpac Bank operates the sole domestic retail bank. There is also a development bank that does not accept deposits. Niue has no exchange control regulations. There are no insurance companies, legal or chartered accounting firms on the island.

In considering the situation in Niue it is very important to understand that the country has a (declining) population of 1,700-1,800. The Government has a very small number of technically skilled people and very limited financial resources.

Background

The setting up of an Offshore Finance Centre was one of Niue's main initiatives to encourage economic growth. The Niue Assembly passed the offshore financial legislation unanimously and seeks to ensure the integrity of the Centre with provisions concerning money laundering, other serious criminal activity and secrecy.

The offshore financial sector currently comprises 2 licensed offshore banks and approximately 6,000 registered international business companies.

The terrorist attacks in New York in September and the subsequent "war on terrorism" has made it urgently necessary for Niue to do something and do it fast. Internationally, efforts have intensified to try and trace financing of terrorism and as a consequence, states with offshore financial sectors have come under more intense scrutiny.

To this end the Monetary Board has reviewed the offshore financial sector, in particular the offshore banking section and after serious consideration has decided not renew any of the existing licences.
It is understood that as of today's date there are now 2 offshore banks with current licences, the last license is expected to expire on 27th February 2002.

Following the passing of resolution 1373 (2001), the Government Niue has commenced its plans to cooperate amending the United Nations Act 1946 to enable its Cabinet of Ministers to make regulations to give effect to the United Nations Security Council resolutions. This was made on 22nd November 2001.

Whilst it would have been ideal to make the regulations before the reporting date of 27 December 2001, Niue has already progressed by holding discussions with New Zealand (Foreign Affairs) as to Niue's requirements for implementation. New Zealand has assured Niue that it will provide Niue with the technical assistance it needs to draft the necessary implementing legislation, probably through a consultant to be appointed as a matter of urgency in the New Year.

Once Niue appoints a consultant to assist it will develop its strategy for complying with resolution 1373.

RESOLUTION 1373

Paragraph 1

a) **What measures, if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d).**

b) **What are the offences and penalties in Niue with respect to the activities listed in this sub-paragraph?**

c) **What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any action taken.**

d) **What measures exist to prohibit the activities listed in this sub-paragraph?**

Niue does not have legislation that defines terrorism and the financing of terrorism as a criminal offence. There are, however, plans to amend the relevant legislation. New Zealand has offered to provide technical assistance in the form of a drafting consultant, and that discussions with New Zealand indicate that assistance will be provided as early as possible in the new year.

The Proceeds of Crime Act 1998 and the Financial Transactions Reporting Act 2000 impose obligations to "know your customer" and report suspicious transactions. They also provide for the establishment of a Financial Intelligence Unit, make money laundering a criminal offence and extend the gateways for information sharing relating to specific transactions where a crime is suspected.
However, these Acts do not cover the sole domestic bank (a branch of an Australian registered bank). Developing capacity in this area is a priority for Niue, because of the FATF requirements and also because of the events of September 11, and Niue is actively seeking assistance from New Zealand and Pacific regional organisations such as the Pacific Island Forum in this regard.

The sole domestic bank, Westpac, has implemented international standard procedures as laid down by Australian authorities and they report suspicious transactions to their Sydney Head Office.

There is no existing legislation which expressly deals with the freezing of assets or accounts but it may be included under the Proceeds of Crime Act 1998 or included/introduced in other legislation.

Paragraph 2

a) **What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in Niue prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?**

b) **What other steps are being taken to prevent the commission of terrorist act, and in particular, what early warning mechanisms exist to allow exchange of information with other states?**

With Niue's small population, there are no terrorist groups on the island. Such a small population means that knowledge about "anything and everything" is widespread and any newcomers to the island are easily spotted.
With Niue's limited industrial industry, there are no factories that manufacture weapons for any military use. In terms of the supply of weapons, Niue's limited air and shipping routes makes it an unlikely transit point.

c) What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.

Under the Entry, Residence and Departure Act 1985 any person who visits Niue must apply for a permit within 30 days if they wish to reside longer on Niue. Each person who applies must provide the following information:

a) at least two character references of the applicant; and
b) a police report and health clearances from the relevant officials of the applicant's home country; and
c) any other information that the Ministers of Cabinet may from time to time specify or require

The Act provides that Cabinet may order any immigrant to leave Niue if it has reasonable cause to believe that such immigrant is a source of danger to the peace, order, or good governance of Niue.

d) What legislation or procedures exist to prevent terrorists acting from Niue against other states or citizens? (supply examples, where possible).

No other legislation or procedures currently exist, on account of the fact that terrorism has never been a problem on Niue. However, when the drafting consultant commences work on the implementation of UNSCR 1373, he or she will review Niue's legislative framework to see where there are gaps that might need additional measures.

e) What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? (supply examples where necessary).
f) What procedures and mechanisms are in place to assist other states? Please provide any available details of how these have been used in practice.

Niue plans to include terrorist acts and serious criminal offences in its legislation in the very near future. New Zealand has indicated that it will assist Niue with this and it is likely that Niue's legislation will be modeled on New Zealand's legislation or other appropriate legislation developed in the similar Pacific Island states.

A special regime exists regarding the return of offenders from Niue to New Zealand and the Cook Islands. The offender is returned on the basis of a foreign-issued warrant. Once that warrant has been authenticated by a judge of the High Court of Niue, the Niue Act 1966 (New Zealand law) requires that the offender be returned unless the High Court is of the opinion that the return would cause undue hardship or would otherwise be unjustifiable or inexpedient. The return to Niue of offenders who are found in New Zealand follows an identical procedure.

In respect of other jurisdictions, the applicable law is found in section 320 of the Niue Act 1966 (New Zealand), which provides that the Extradition Act 1965 (New Zealand) is Niue law and also provides a number of adaptations of that law to Niue circumstances. The Extradition Act was amended in 1998 and now includes money laundering as an offence for which a person may be extradited.

The Fugitive Offenders Act 1881 (UK) is also in force in Niue. The Act provides that, where a person accused of having committed an offense in one part of the Commonwealth has left that area and is found in another part of the Commonwealth, the person can be apprehended and returned to the part of the Commonwealth where the offense was committed. The phrase "part of the Commonwealth" is defined in the Fugitive Offenders Amendment Act 1976 (New Zealand) to include any county that is a member of the Commonwealth.

g) How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc?

All Niueans are New Zealand citizens and hold New Zealand passports. The New Zealand High Commission on Niue issues all New Zealand passports.

Niue has three flights per week and all flights fly from Tonga/Niue/Tonga on a "Shorts 360" aircraft (capacity of 30 seats). Niue is not a transit point for any other routes. Border controls are therefore checked at other destinations such as Tonga and New Zealand.

In terms of shipping, there are two cargo ships that visit Niue each month, both originating and ending in New Zealand. The only area of concern would be for yachts that visit generally during the months of April to November and also the occasional private jet that calls into Niue for refueling purposes.

It must be noted that with a population of around 1700 – 1800, any foreigners to the island do not go unnoticed.

Paragraph 3

a) What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

b) What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

c) What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

The Mutual Assistance in Criminal Matters Act 1998 relates to the provision and obtaining of international assistance in criminal matters. This Act was passed in efforts to strengthen legislation relating to Niue's offshore financial sector, in particular, money laundering.

The Niue Police Department cooperates with Interpol queries upon request. There is also an informal network amongst regional offshore centres which provides information on "blacklisted" individuals or companies suspected of money laundering and other activities. These do not extend to terrorists or acts of terrorism or even financing of terrorism and Niue will be keen to introduce this element.
The Pacific Islands Forum Secretariat is in the process of establishing a regional Financial Intelligence Unit and Niue will be seeking to include terrorist activities and financing of terrorist activities as part of the regional network of sharing information.

d) What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

e) Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

Niue has acceded to the following Conventions by virtue of its constitutional relationship with New Zealand. On accession New Zealand declared the Conventions applicable to Niue:

- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents
- International Convention Against the Taking of Hostages

The Niue Government is committed to playing its part in terms of combating terrorism and illegal financing operations. The Government will be reviewing each of the Conventions over the coming months. Niue's tiny population means that there may be capacity and implementation issues where Niue will need technical or financial assistance, before Niue can ratify

f) What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

g) What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

With Niue's tiny population, Niue has not accepted refugees or those seeking political asylum as it does not have the infrastructure or the resources to deal with them.